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#### ANTI-TRUST LAW.

*Territorial limitation of operation of Sherman Anti-Trust Law.*

The prohibitions of the Sherman Anti-Trust Law of July 2, 1890, c. 647, 26 Stat. 209, do not extend to acts done in foreign countries even though done by citizens of the United States and injuriously affect-

ing other citizens of the United States. *American Banana Co. v. United Fruit Co.*, 347.

### APPEAL AND ERROR.

1. *Finality of judgment of state court—Writ of error will not lie to judgment remanding case for trial.*

Where the highest court of the State reverses an order of an inferior state court removing a cause and remands the case to the state court for trial, and, after trial and verdict for plaintiff, the judgment is sustained by the highest court, the last judgment is the only final one to which the writ of error will run from this court; defendant cannot prosecute a writ of error to the judgment remanding the cause. (*Schlosser v. Hemphill*, 198 U. S. 173.) *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.

2. *Criminal appeals by Government—Construction of § 935 of Code of District of Columbia.*

Under § 935 of the Code of the District of Columbia, act of March 3, 1901, c. 854, 31 Stat. 1341, a writ of error will not lie from the Court of Appeals to the Supreme Court of the District at the instance of the Government to review a judgment based on a verdict of not guilty. *United States v. Evans*, 297

3. *Object of act of March 3, 1891.*

The object of the act of March 3, 1891, c. 517, 26 Stat. 826, was to distribute the appellate jurisdiction of this court between it and the Circuit Court of Appeals, and to abolish the appellate jurisdiction of the Circuit Court. *Macfadden v. United States*, 288.

4. *Effect of appeal to Circuit Court of Appeals on right to direct writ of error from this court.*

Although where a real constitutional question exists a writ of error can be sued out directly from this court to the trial court under § 5 of the act of 1891, the right to do so is lost by taking an appeal to the Circuit Court of Appeals. (*Robinson v. Caldwell*, 165 U. S. 359.) *Ib.*

5. *When writ of error will lie to Circuit Court of Appeals in case appealed to that court which might have been brought direct to this court.*

Where the case can be taken directly to this court under § 5, or to the Circuit Court of Appeals under § 6, and the latter appeal is taken, while a writ of error will lie to the Circuit Court of Appeals if the jurisdiction of the Circuit Court rests, as shown by plaintiff's statement, on grounds, one of which is reviewable by this court, it will

not lie if the only ground of jurisdiction is one where the judgment of the Circuit Court of Appeals is final. *Ib.*

See BANKRUPTCY, 3, 4, 5, 6;

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#### APPEARANCE.

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#### BANKRUPTCY.

1. *Preferences—Fraud to invalidate conveyance under § 67c of bankruptcy act.*

An attempt to prefer is not necessarily an attempt to defraud, nor is a preferential transfer always a fraudulent one. The question of fraud depends upon the motive, and in order to invalidate a conveyance as one made to hinder, delay or defraud creditors within the meaning of § 67c of the bankruptcy act actual fraud must be shown. *Coder v. Arts*, 223.

2. *Preferences—Validity under § 67c of bankruptcy act, of mortgage given more than four months prior to petition in bankruptcy.*

In this case a mortgage given within four months of filing the petition to secure advances and while the mortgagee did not know of the mortgagor's insolvency, although the latter did, and which mortgage was found not to have been made with intent to hinder, delay or defraud creditors, held not to be voidable under § 67e of the bankruptcy law and that the mortgagee was entitled to priority thereon with interest. *Ib.*

3. *Appeals. What constitutes a proceeding in bankruptcy within meaning of § 25b of bankruptcy act.*

Where a creditor presents a claim to the trustee joined with a statement that he has security upon the estate which it is his purpose to maintain and upon which he is entitled to priority, he institutes a proceeding in bankruptcy as distinguished from a controversy arising in the course of bankruptcy proceedings and an appeal lies to the Circuit Court of Appeals under § 25b, and the party aggrieved is not limited by § 24b to a petition for revision; and an appeal also lies to this court, under the rules prescribed by it, if the amount involved exceeds \$2,000 and the question involved is one which gives jurisdiction to this court to review judgments of the state courts under § 709, Rev. Stat., or if a certificate of a justice of this court is made as required by par. 2 of subd. b of § 25. *Ib.*

4. *Appeals from Circuit Court of Appeals. Sufficiency of compliance with General Order No. 36.*

General Order of this court, No. 36 in bankruptcy, which requires an appeal from a judgment of the Circuit Court of Appeals to be taken within thirty days, and that the court from which the appeal lies to make findings of fact and conclusions of law within thirty days *held* to be complied with by the Circuit Court of Appeals making findings within such thirty days, and directing them to be filed *nunc pro tunc* as of the day of entry of judgment, the appeal having also been taken within thirty days from such day of entry. *Ib.*

5. *Appeals from Circuit Court of Appeals. Involution of Federal question.*

Where the claimant against a bankrupt's estate asserts a lien which would be defeated under the construction placed upon the bankruptcy act by the trustee, and the lien is allowed, a Federal question is involved, which if involved in a case in the state court would give this court jurisdiction to review the judgment under § 709, Rev. Stat., and the case is appealable from the Circuit Court of Appeals to this court under § 25b of the bankruptcy act. *Ib.*

6. *Appeals from Circuit Court of Appeals. Scope of review.*

On appeals from the Circuit Court of Appeals under § 25b this court, under par. 3 of General Orders in Bankruptcy No. 36, can only look at the facts found by the Circuit Court of Appeals. *Ib.*

7. *Trustee's obligation in respect of assets pledged by bankrupt.*

Equity looks at substance and not at form. An advance payment for coal yet to be mined may be a pledge on the coal and, in that event, as in this case, the trustee in bankruptcy takes the mine subject to the obligation to deliver the coal as mined to the extent of the advancement. *Hurley v. Atchison, Topeka & Santa Fe Ry. Co.*, 126.

See JURISDICTION, A 9;

PARTNERSHIP, 1.

## BOUNDARIES.

1. *Missouri and Kansas—Effect of erosion on water boundary.*

The boundary line between Missouri and Kansas is and remains, notwithstanding its shifting position by erosion, the middle of the Missouri River from a point opposite the middle of the mouth of the Kansas or Kaw River. *Missouri v. Kansas*, 78.

2. *Missouri and Kansas—Effect of act of June 7, 1836.*

The act of June 7, 1836, c. 86, 5 Stat. 34, altering the western boundary

of Missouri, is to be construed in the light of extrinsic facts; and, as so construed, its object was not to add territory to the State but to substitute the Missouri River as a practical boundary, so far as possible, instead of an ideal line along a meridian. *Ib.*

3. *Missouri and Kansas—Title to island in Missouri River.*

The result of this decision is that an island in the Missouri River west of the centre of its main channel, as that channel now exists, belongs to Kansas, notwithstanding such island is east of the original boundary line of Missouri. *Ib.*

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*Rajael v. Verelst*, 2 Wm. Bl. 983, 1055, distinguished in *American Banana Co. v. United Fruit Co.*, 347.  
*Siemens v. Sellers*, 123 U. S. 276, distinguished in *Leeds & Catlin v. Victor Talking Mach. Co.*, 301.  
*South Carolina v. United States*, 199 U. S. 437, distinguished in *Murray v. Wilson Distilling Co.*, 151.  
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- Boston Mining Co. v. Montana Ore Co.*, 188 U. S. 632, followed in *In re Winn*, 458.  
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*Ceder v. Arts*, 213 U. S. 223, followed in *Hurley v. Atchison, Topeka & Santa Fe Ry. Co.*, 126.  
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- Dennick v. Railroad Co.*, 103 U. S. 11, followed in *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.
- Dowell v. Appelgate*, 152 U. S. 327, followed in *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.
- Embry v. Palmer*, 107 U. S. 3, followed in *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.
- Ex parte Wisner*, 203 U. S. 449, followed in *In re Winn*, 458.
- Fairbank v. United States*, 181 U. S. 283, followed in *Selliger v. Kentucky*, 200.
- Harriman v. Interstate Com. Comm.*, 211 U. S. 407, followed in *United States v. Delaware & Hudson Co.*, 366.
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- Insurance Co. v. Tweed*, 7 Wall. 44, followed in *Atchison, Topeka & Santa Fe Ry. Co. v. Calhoun*, 1.
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- Miner's Bank v. Iowa*, 12 How. 1, followed in *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.
- New Haven Railroad v. Interstate Commerce Commission*, 200 U. S. 361, followed in *United States v. Delaware & Hudson Co.*, 366.
- Robinson v. Caldwell*, 165 U. S. 359, followed in *Macfadden v. United States*, 288.
- Schlosser v. Hemphill*, 198 U. S. 173, followed in *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.
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- Stewart v. Baltimore & Ohio R. R.*, 168 U. S. 445, followed in *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.
- Traction Co. v. Mining Co.*, 196 U. S. 239, followed in *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.
- Turner v. Williams*, 194 U. S. 279, followed in *Keller v. United States*, 138.
- United States v. Bitter Root Co.*, 200 U. S. 451, followed in *Equitable Life Insurance Co. v. Brown*, 25.
- United States v. Keitel*, 211 U. S. 370, followed in *United States v. Mason*, 115.
- United States v. Perez*, 9 Wheat. 579, followed in *Keerl v. Montana*, 135.
- U. S. Fidelity Co. v. Struthers Wells Co.*, 209 U. S. 306, followed in *Davidson Marble Co. v. Gibson*, 10.



## CERTIORARI.

1. *Right to, of United States, in criminal case. Act of March 3, 1891, construed.*

The writ of certiorari cannot be granted under the act of March 3, 1891, c. 517, 26 Stat. 826, in a criminal case at the instance of the United States whatever the supposed importance of the questions involved. *United States v. Sanges* 144 U. S. 310, distinguished. *United States v. Dickinson*, 92.

2. *Right to, of United States, in criminal case. Act of March 2, 1907, construed.*

The act of March 2, 1907, c. 2564, 34 Stat. 1246, giving an appeal to the Government in certain criminal cases cannot be extended beyond its terms, or construed so as to extend the power of certiorari under the act of March 3, 1891, c. 517, 26 Stat. 826, to bring up a criminal case for the correction of mere error at the instance of the United States. *Ib.*

3. *Power of this court to issue.*

The power of this court to issue the writ of certiorari under § 14 of the Judiciary Act of 1789, now § 716, Rev. Stat., is not a grant of appellate jurisdiction to review for correction of mere error. *Ib.*

## CIRCUIT COURTS.

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## CONSTITUTIONAL LAW.

1. *Due process of law; effect of erroneous decision to deny.*

When parties have been fully heard in the regular course of judicial proceedings an erroneous decision does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment. *Bonner v. Gorman*, 86.

2. *Due process of law; quære as to application of provision of Fourteenth Amendment.*

*Quære*, and not decided, whether the due process provision of the Fourteenth Amendment in itself forbids a State from putting one of its citizens in second jeopardy. *Keerl v. Montana*, 135.

*See* INTERSTATE COMMERCE, 5.

*Equal protection of the law. See* INTERSTATE COMMERCE, 6.

3. *Judicial powers of United States. What amounts to suit against State within inhibition of Eleventh Amendment.*

Purchases made by state officers of supplies for business carried on by the State are made by the State, and suits by the vendors against

the state officers carrying on or winding up the business are suits against the State and, under the Eleventh Amendment, beyond the jurisdiction of the Federal courts; and so *held* as to suits against commissioners to wind up the State Liquor Dispensary of South Carolina. *Murray v. Wilson Distilling Co.*, 151.

4. *Same.*

A bill in equity to compel specific performance of a contract between an individual and a State cannot, against the objection of the State, be maintained in the Federal courts. (*Christian v. Atlantic & N. C. R. R.*, 133 U. S. 233.) *Ib.*

5. *Legislative powers of Congress. Full faith and credit to acts, etc., of Territories.*

Under the provisions of the Constitution which declare the supremacy of the National Government, Congress has power to enact, as it has done by §§ 905, 906, Rev. Stat., that the same faith and credit be given in the courts of the States and Territories to public acts, records, and judicial proceedings of the Territories as are given to those of the States under Art. IV, § 1 of the Constitution. (*Embry v. Palmer*, 107 U. S. 3.) *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.

*See* INTERSTATE COMMERCE, 6.

6. *Personal rights; double jeopardy; mistrial resulting from disagreement of jury not ground for plea of.*

Where a state court has the right to discharge the jury if it satisfactorily appear after a reasonable time that a disagreement is probable, and the state court so finds after the jury has been out for twenty-four hours, and discharges the jury, the result is a mistrial and the accused cannot on a subsequent trial interpose the plea of once in jeopardy by reason thereof, *United States v. Perez*, 9 Wheat. 579; and so *held* in regard to a trial in Montana where the jury had been discharged under § 2125, Penal Code of that State. *Keel v. Montana*, 135.

7. *States; exemption from suit in Federal courts.*

The consent of a State to be sued in its own courts by a creditor does not give that creditor the right to sue in a Federal court. (*Chandler v. Dix*, 194 U. S. 590.) *Murray v. Wilson Distilling Co.*, 151.

8. *Same.*

Although by engaging in business a State may not avoid a preëxisting right of the Federal Government to tax that business, the State

does not thereby lose the exemption from suit under the Eleventh Amendment. *South Carolina v. United States*, 199 U. S. 437, distinguished. *Ib.*

9. *States; taxing power; warehouse receipts for exported goods exempt from.*

Where goods are exempt from the taxing power of the State under the Constitution of the United States because not within the State, the protection of the Constitution extends to warehouse receipts for those goods locally present within the State; and this rule applied to whiskey in a foreign country, warehouse receipts for which were held by a person in Kentucky and sought to be taxed as personal property at owner's domicile. *Selliger v. Kentucky*, 200.

10. *States; police power reserved to.*

Speaking generally, the police power is reserved to the States and there is no grant thereof to Congress in the Constitution. *Keller v. United States*, 138.

11. *States; powers reserved to; Federal legislation invalid as within. Immigration Act of 1907 construed.*

That portion of the act of February 20, 1907, c. 1134, 34 Stat. 898, which makes it a felony to harbor alien prostitutes held, unconstitutional as to one harboring such a prostitute without knowledge of her alienage or in connection with her coming into the United States, as a regulation of a matter within the police power reserved to the State and not within any power delegated to Congress by the Constitution. *Ib.*

### CONSTRUCTION.

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### CONTRACTS.

1. *Construction; consideration of circumstances surrounding parties at time of making.*

The object of construction of a contract is to effectuate the intention of the parties in making it; and it should be interpreted in the light of the circumstances surrounding the parties at the time when it was made. *Sand Filtration Corporation v. Cowardin*, 360.

2. *Construction; when cotemporaneous contracts not construed together.*

Although contracts relating to the same subject may be dated the same day they need not be construed together as one instrument if all the parties to both are not in privity. *Ib.*

3. *Construction of agreement to pay a sum out of profits.*

An agreement to pay a sum out of profits of a contract *held*, in this case, not to depend on whether profits were or were not realized by a sub-contractor but only on whether such profits were realized by the party making the contract. *Ib.*

4. *Avoidance; concealment by one party from the other, of material facts, as ground for.*

Where there is a duty on a party to a contract, acting in good faith, to disclose material facts within his exclusive knowledge to the other party, concealment of those facts is equivalent to misrepresentation and ground for avoiding the contract; this is a rule of common law, and also of the Spanish law before the adoption of the Philippine Civil Code; and, under §§ 1261-1269 of the Civil Code of the Philippine Islands, a contract obtained under such circumstances can be avoided by the party whose consent would not have been given had he known the facts within the knowledge of the other party. *Strong v. Repide*, 419.

See CONSTITUTIONAL LAW, 4;  
INSURANCE COMPANIES, 3.

## CORPORATIONS.

1. *Directors—Right of director to acquire shares from one kept in ignorance of conditions affecting value.*

A director upon whose action the value of the shares depends cannot avail of his knowledge of what his own action will be to acquire shares from those whom he intentionally keeps in ignorance of his expected action and the resulting value of the shares. *Strong v. Repide*, 419.

2. *Directors; duty of one purchasing shares from shareholder to disclose knowledge affecting value.*

Even though a director may not be under the obligation of a fiduciary nature to disclose to a shareholder his knowledge affecting the value of the shares, that duty may exist in special cases, and did exist upon the facts in this case. *Ib.*

3. *Directors; violation of duty by one purchasing shares from shareholders in concealing exclusive knowledge affecting value. Avoidance of sale for deceit.*

In this case the facts clearly indicate that a director of a corporation owning friar lands in the Philippine Islands, and who controlled the action of the corporation, had so concealed his exclusive knowledge of the impending sale to the Government from a shareholder

from whom he purchased, through an agent, shares in the corporation, that the concealment was in violation of his duty as a director to disclose such knowledge and amounted to deceit sufficient to avoid the sale; and, under such circumstances, it was immaterial whether the shareholder's agent did or did not have power to sell the stock. *Ib.*

4. *Directors; right to acquire shares of stock entrusted to them.*

The expressed prohibitions in § 1459 of the Spanish Civil Code against directors of corporations acquiring shares of stock entrusted to them do not apply to purchases from others. *Ib.*

5. *Same.*

An expressed prohibition against directors acquiring shares held by themselves in a fiduciary capacity does not refer to purchases by directors of shares from others, or so limit the prohibitions against purchases of stock by directors that a sale to one cannot be avoided by his deceit in not disclosing material facts within his exclusive knowledge. *Ib.*

6. *Stockholders' right to protect corporation where directory derelict—Effect of equity rule No. 94.*

Equity rule No. 94, which is intended to secure the Federal courts from imposition upon their jurisdiction, recognizes the right of the corporate directory to corporate control, and expresses primarily the conditions which must precede the right of the stockholders to protect the corporation in cases where the directory is derelict; but the requirements of the rule may be dispensed with where they do not apply by reason of antagonism between the directory and the corporate interest. *Delaware & Hudson Co. v. Albany & Susquehanna R. R. Co.*, 435.

7. *Same.*

Equity rule No. 94 is intended to have a practical application and it does not apply where the corporate interests can only be protected by a suit, which, if successful, would be detrimental to all the directors in other capacities. *Ib.*

8. *Stockholders; suit by; resort to directory and stockholders' meeting as conditions precedent.*

Where, as in this case, stockholders of a lessor corporation sued, for its benefit, the lessee corporation, the directors of the two corporations being almost identical and the lessee corporation also owning, or holding the voting power, of sufficient stock of the lessor corpora-

tion to control a stockholders' meeting, the fact that the stockholders bringing the suit made no demand for relief upon the board of directors nor any effort to obtain relief at a stockholders' meeting does not prevent them from maintaining the bill. *Ib.*

9. *Quære as to stockholders compelling directors to sue.*

*Quære*, and not decided, whether stockholders have power to compel directors to institute suits to which the latter are opposed. *Ib.*

See EQUITY, 2, 3; JURISDICTION, D; E 1;  
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INTERSTATE COMMERCE, 3; STATUTES, A 4;  
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### COURTS.

*Federal and state; acceptance by former of judgment of latter.*

As the Federal court accepts the judgment of a state court construing the meaning and scope of a state enactment, whether civil or criminal, it should also accept the judgment of a state court based on the verdict of acquittal of a crime against the State. *United States v. Mason*, 115.

See CONSTITUTIONAL LAW, 5, 7; JURISDICTION;  
CORPORATIONS, 6; REMOVAL OF CAUSES;  
INJUNCTION, 2; SOVEREIGNTY, 1;  
TREATIES, 1.

### CRIMINAL APPEALS.

See APPEAL AND ERROR, 2;  
CERTIORARI, 2.

### CRIMINAL LAW.

*Crimes embraced in § 5509, Rev. Stat.*

Section 5509, Rev. Stat., does not embrace any felony or misdemeanor against a State of which, prior to the trial in Federal court of the Federal offense the defendants had been lawfully acquitted by a state court having full jurisdiction. *United States v. Mason*, 115.

See CERTIORARI, 1, 2;  
CONSTITUTIONAL LAW, 11;  
LEX LOCI.

### DECEIT.

See CORPORATIONS, 3, 5.

### DEMURRER.

See PLEADING, 1, 2.

## DEPRIVATION OF PROPERTY.

*See* CONSTITUTIONAL LAW, 1.

## DIRECTED VERDICT.

*See* VERDICT.

## DIRECTORS OF CORPORATIONS.

*See* CORPORATIONS.

## DISCHARGE OF JURY.

*See* CONSTITUTIONAL LAW, 6.

## DISCOVERY.

*See* EQUITY, 6.

## DISTRICT COURTS.

*See* JURISDICTION, D.

## DISTRICT OF COLUMBIA.

*See* APPEAL AND ERROR, 2.

## DOUBLE JEOPARDY.

*See* CONSTITUTIONAL LAW, 2, 6

## DUE PROCESS OF LAW.

*See* CONSTITUTIONAL LAW, 1, 2;  
INTERSTATE COMMERCE, 5, 6.

## ELEVENTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 3, 4, 8.

## EQUAL PROTECTION OF LAWS.

*See* INTERSTATE COMMERCE, 6.

## EQUITY.

1. *Interposition where remedy at law.*

Equity will not interpose where there is a remedy at law which is as complete, practicable and adequate as equity could afford. *Boise Water Co. v. Boise City*, 276.

2. *Presumption of injury to give equity jurisdiction, not indulged in.*

A municipality speaks through its council, and where the bill does not



allege any facts showing threats to remove property of a complainant public service corporation such action will not be presumed so as to give equity jurisdiction. *Ib.*

3. *Interference with municipality in effort to collect license fee.*

A suit at law by a municipality to collect a license fee imposed by ordinance on a public service corporation contemplates continuance, and not restraint, of the business of such corporation, and, as the defense of unconstitutionality of the ordinance is open in that suit, equity should not interfere. *Ib.*

4. *Multiplicity of suits as ground for interposition of.*

In order to make the fear of multiplicity of suits a ground for the interposition of a court of equity, more than one suit must have been commenced, and the court should not interfere unless it is clearly necessary to protect complainant from continued and vexatious litigation. *Ib.*

5. *Multiplicity of suits as ground for jurisdiction.*

A complainant who can obtain all the relief to which he is entitled in a single suit cannot invoke the interference of a court of equity on the ground that defendant may be saved a multiplicity of suits against it by others situated similarly to himself. *Equitable Life Assurance Soc. v. Brown*, 25.

6. *Jurisdiction of cases of fraud wanting where adequate remedy at law.*

Equity does not now take jurisdiction in cases of fraud where the relief properly obtainable on that ground can be obtained in a court of law, and where, so far as necessary, discovery may be obtained as well as in equity. (Rev. Stat. § 724; *United States v. Bitter Root Co.*, 200 U. S. 451.) *Ib.*

See ACCOUNTS AND ACCOUNTING;	INSURANCE COMPANIES, 2;
BANKRUPTCY, 7;	PLEADING, 2;
INJUNCTION;	RECEIVERS, 1.

EQUITY RULE NO. 94.

See CORPORATIONS, 6, 7.

EVIDENCE.

1. *Opinion; qualification of lay witness to testify as to mental capacity of a testator.*

Where the issue is whether a person is of sound or unsound mind, a lay witness, who has had an adequate opportunity to observe the speech and conduct of that person, may, in addition to relating the signifi-

cant instances of speech and conduct, testify to the opinion formed at the time of observation as to the mental capacity of such person. *Turner v. American Security & Trust Co.*, 257.

2. *Opinion—Determination of qualification of witness ordinarily for trial court.*

While a general rule cannot be framed for all cases, and in clear cases of abuse the appellate court should reverse, the determination of whether a witness is qualified to state his opinion as to the mental condition of a testator is for the trial judge who has all the evidence and the witness before him, and in this case the trial judge does not seem to have abused his discretion as to the admission of testimony. *Ib.*

3. *Remoteness and tendency to raise collateral issue as grounds for exclusion.*

Evidence as to an alleged delusion of testator thirty years before execution of the will *held* to be properly excluded both because of remoteness and of the tendency to raise a collateral issue as to whether the statements connected therewith were or were not actually false. *Ib.*

4. *Competency in will contest where issue mental incapacity.*

Where the wife as caveator attacks testator's soundness of mind because he referred to himself at times as a widower and at times as divorced, an agreement of separation and a deed referring to himself as widower admitted solely to explain why testator so referred to himself *held* competent for that purpose, but evidence by the wife as to her reasons for signing the agreement and other instruments, in which she joined with her husband as his wife, were properly excluded. *Ib.*

5. *Admission of incompetent evidence as reversible error—Cure of error by withdrawal from jury.*

The admission of incompetent evidence is not reversible error if subsequently it is distinctly withdrawn from the jury, and so *held* in this case where a letter was erroneously admitted but the presiding judge, at request of the party objecting to its admission; instructed the jury that nothing in such letter was to be taken as evidence of truth of the statements therein or even to be used for purposes of cross-examination. *Ib.*

See PRACTICE AND PROCEDURE, 6;  
VENDOR AND VENDEE, 2.

EXECUTION.

*See* SALES

EXPORTS.

*See* CONSTITUTIONAL LAW, 9.

EXTRATERRITORIALITY.

*See* ANTI-TRUST LAW;  
LEX LOCI.

FACTS.

*See* JURISDICTION, 11;  
PLEADING, 1, 2;  
PRACTICE AND PROCEDURE, 1-7.

FEDERAL QUESTION.

*When raised too late.*

Where the Federal question is raised for the first time on the second appeal and the state court refuses to consider it, it comes too late.  
*Bonner v. Gorman*, 86.

*See* BANKRUPTCY, 5;  
JURISDICTION, A 3, 4, 5, 6; C 4, 5;  
REMOVAL OF CAUSES, 1.

FIDUCIARIES.

*See* CORPORATIONS, 2, 5.

FIFTH AMENDMENT.

*See* INTERSTATE COMMERCE, 5.

FINAL JUDGMENTS.

*See* APPEAL AND ERROR, 1;  
JUDGMENTS AND DECREES, 1, 2.

FOREIGN CORPORATIONS.

*See* JURISDICTION, E 1, 2;  
STATES, 1.

FOREIGN PATENTS.

*See* PATENTS, 6, 7, 8.

FOURTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 5.

## INDEX.

## FOURTEENTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 1, 2.

## FRAUD.

*See* BANKRUPTCY, 1; EQUITY, 6;  
CONTRACTS, 4; PROCESS;  
VENDOR AND VENDEE.

## FRAUDULENT CONVEYANCES.

*See* BANKRUPTCY, 1.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 5.

## GENERAL ORDERS IN BANKRUPTCY.

*See* BANKRUPTCY, 4, 6.

## GOVERNMENT.

*See* SOVEREIGNTY.

## GOVERNMENT CONTRACTS

*See* JURISDICTION, C 2;  
STATUTES, A 11.

## HEPBURN ACT.

*See* INTERSTATE COMMERCE;  
STATUTES, A 4.

## IMMIGRATION.

*Power of Congress over; control of aliens after arrival and of dealings therewith.*

Where there is collision between the power of the State and that of Congress, the superior authority of the latter prevails. While Congress has power to exclude aliens from, and to prescribe the terms and conditions on which aliens may come into, the United States, *Turner v. Williams*, 194 U. S. 279, that power does not extend to controlling dealings with aliens after their arrival merely on account of their alienage. *Keller v. United States*, 138.

*See* CONSTITUTIONAL LAW, 11;

VERDICT.

## INFRINGEMENT OF PATENT.

*See* PATENTS, 9-13.

## INJUNCTION.

1. *Against enforcement of tax; not ordinarily granted. Sufficiency of grounds for.*

As the defense of the unconstitutionality and illegality of a tax is open in a court of law, injunction should not issue against the enforcement of the tax merely because it is unconstitutional or illegal unless other circumstances bring the case within some clear ground of equity jurisdiction. *Boise Water Co. v. Boise City*, 276.

2. *Non-interference by Federal courts, by injunction, with fiscal arrangements of State.*

Even though some States may for convenience of remedy permit equity to enjoin the collection of a tax for mere illegality, courts of a different and paramount sovereignty should not do so, and Federal courts should not interfere by injunction with the fiscal arrangements of a State if the rights involved can be preserved in any other manner. *Ib.*

3. *Cloud on title as ground for enjoining collection of tax.*

Equity should not enjoin the collection of a tax on the ground of cloud on title when the tax can only be collected by a suit at law in which the defense of its illegality is open, and it does not appear that the tax is a lien on any of complainant's property. *Ib.*

See JURISDICTION, C 7;

PRACTICE AND PROCEDURE, 2.

## INSURANCE COMPANIES.

1. *Status as trustee of policyholders.*

The Equitable Life Assurance Society is not a trustee of its policyholders under its charter and policies as the same have been construed by the highest courts of the State of New York. *Equitable Life Assurance Soc. v. Brown*, 25.

2. *Policyholder's right of action against; grounds for resort to equity.*

While wrongdoing, waste, and misapplication of funds reducing the surplus of an insurance company before distribution, might give ground of action to a policyholder, it would not necessarily, where there is no allegation of insolvency, give ground for equitable action. *Ib.*

3. *Right of policyholder to participate in surplus.*

As the charter and contract have been construed by the highest court of New York, a policyholder in the Equitable Life Assurance Society can only participate in the surplus of the society according to

the terms of the policy; and a discretion rests with the officers of the society as to what amount of surplus shall be retained and distributed, and when the distribution shall be made. *Ib.*

See ACCOUNTS AND ACCOUNTING; JURISDICTION, E 2;

ACTIONS, 1;

RECEIVERS, 1, 2;

STATES, 1.

### INTERSTATE COMMERCE.

#### 1. *Hepburn Act; commodities clause construed; limitation of application.*

In construing the commodities clause of the Hepburn Act the suggestion of the Government to limit its application to commodities while in the hands of a carrier or its first vendee, and, as thus construed, extend the indirect interest prohibition to commodities belonging to corporations the stock whereof is owned in whole or in part by the carrier, or those which had been mined, manufactured or produced by the carrier prior to the transportation, cannot be accepted. *United States v. Delaware & Hudson Co.*, 366.

#### 2. *Hepburn Act; commodities clause; railway not prohibited from moving commodities manufactured, etc., by it.*

The provision contained in the Hepburn Act approved June 29, 1906, c. 3591, 34 Stat. 584, commonly called the commodities clause, does not prohibit a railway company from moving commodities in interstate commerce because the company has manufactured, mined or produced them, or owned them in whole or in part or has had an interest direct or indirect in them, wholly irrespective of the relation or connection of the carrier with the commodities at the time of transportation. *Ib.*

#### 3. *Hepburn Act; commodities clause; what embraced within provision relating to interest of carrier.*

The provision of the commodities clause relating to interest, direct or indirect, does not embrace an interest which a carrier may have in a producing corporation as the result of the ownership by the carrier of stock in such corporation provided the corporation has been organized in good faith. *Ib.*

#### 4. *Hepburn Act; commodities clause; object of clause; transportation prohibited.*

Rejecting the construction placed by the Government upon the commodities clause, it is decided that that clause, when all its provisions are harmoniously construed, has solely for its object to prevent carriers engaged in interstate commerce from being associ-

ated in interest at the time of transportation with the commodities transported, and it therefore only prohibits railroad companies engaged in interstate commerce from transporting in such commerce commodities under the following circumstances and conditions: (a) When the commodity has been manufactured, mined or produced by a railway company or under its authority and at the time of transportation the railway company has not in good faith before the act of transportation parted with its interest in such commodity; (b) When the railway company owns the commodity to be transported in whole or in part; (c) When the railway company at the time of transportation has an interest direct or indirect in a legal sense in the commodity, which last prohibition does not apply to commodities manufactured, mined, produced, owned, etc., by a corporation because a railway company is a stockholder in such corporation. Such ownership of stock in a producing company by a railway company does not cause it as owner of the stock to have a legal interest in the commodity manufactured, etc., by the producing corporation. *Ib.*

5. *Hepburn Act; commodities clause; power of Congress to enact; effect to violate due process provision of the Fifth Amendment.*

As thus construed the commodities clause is a regulation of commerce inherently within the power of Congress to enact. *New Haven Railroad v. Interstate Commerce Commission*, 200 U. S. 361. The contention that the clause if applied to preëxisting rights will operate to take property of railroad companies and therefore violate the due process provision of the Fifth Amendment, having been based upon the assumption that the clause prohibited and restricted in accordance with the construction which the Government gave that clause is not tenable as to the act as now construed which merely enforces a regulation of commerce by which carriers are compelled to dissociate themselves from the products which they carry and does not prohibit where the carrier is not associated with the commodity carried. *Ib.*

6. *Hepburn Act; commodities clause; power of Congress to except timber; effect of exception on constitutionality of act.*

The constitutional power of Congress to make regulations for interstate commerce is not limited by any requirement that the regulations should apply to all commodities alike, nor does an exception of one commodity from a general regulation of interstate commerce necessarily render a statute unconstitutional as discriminating between carriers; and the exception of timber in the commodities clause of the Hepburn Act does not render the act unconstitutional, nor can

the question of the expediency of such an exception affect the question of power. *Ib.*

7. *Hepburn Act; commodities clause; character of Delaware & Hudson Company as railroad within purview of clause.*

Although the Delaware and Hudson Company may originally have been chartered principally for mining purposes, as it is now engaged as a common carrier by rail in the transportation of coal in the channels of interstate commerce, it is a railroad company within the purview of the commodities clause and is subject to the provisions of that clause as they are now construed. *Ib.*

See JURISDICTION, A 3;

STATES, 2;

STATUTES, A 4.

### INTOXICATING LIQUORS.

See LOCAL LAW (S. CAR.).

### INVENTION.

See PATENTS.

### ITALY.

See TREATIES, 2, 3.

### JEOPARDY.

See CONSTITUTIONAL LAW, 2, 6.

### JUDGMENTS AND DECREES.

1. *Finality of judgment.*

Where the case goes more than once to the highest court of the State only the last judgment is the final one. *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.

2. *Finality of judgment of Circuit Court of Appeals in criminal case.*

The judgment of the Circuit Court of Appeals in a criminal case is final, and is no less so because the appellate jurisdiction of this court might have been invoked directly under § 5 of the act of 1891. *Macfadden v. United States*, 288.

See APPEAL AND ERROR, 1;

JURISDICTION, C 6, 7, 8;

COURTS;

PRACTICE AND PROCEDURE, 13, 14;

SALES.



## JUDICIAL DISCRETION.

See EVIDENCE, 2;  
MANDAMUS, 4.

## JUDICIAL LEGISLATION.

See INTERSTATE COMMERCE, 1.

## JUDICIAL POWERS.

See CONSTITUTIONAL LAW, 3;  
PRACTICE AND PROCEDURE, 12.

## JUDICIAL SALES.

See SALES.

## JURISDICTION.

## A. OF THIS COURT.

1. *Under § 709, Rev. Stat. Sufficiency of involution of Federal question.*

To give this court jurisdiction under § 709, Rev. Stat., not only must a right under the Constitution of the United States be specially set up, but it must appear that the right was denied in fact or that the judgment could not have been rendered without denying it. *Western Union Telegraph Co. v. Wilson*, 52.

2. *Under § 709, Rev. Stat. Sufficiency of involution of Federal question.*

Where the constitutional right was not set up in the original plea, and the record does not disclose the reasons of the state court for refusing to allow a new plea setting up the constitutional right, and the record shows that the refusal might have been sufficiently based on non-Federal grounds, this court cannot review the judgment under § 709, Rev. Stat. *Ib.*

3. *Under § 709, Rev. Stat. Sufficiency of involution of Federal question.*

Where it does not appear in the record that a telegraph message between two points in the same State had to be transmitted partly through another State, except by a plea which the state court refused, on non-Federal grounds, to allow to be filed, no Federal question is involved and this court cannot review the judgment under § 709, Rev. Stat. *Ib.*

4. *Under § 709, Rev. Stat. What amounts to denial of Federal right.*

Where the opinion of the state court shows that it considered and denied the validity of a statute of another State, and its binding force to control the right of action asserted, a Federal right specially

set up is denied, and this court has jurisdiction to review the judgment under § 709, Rev. Stat. *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.

5. *Under § 709, Rev. Stat. What constitutes denial of Federal right.*

Where the state court has found on the facts based on the evidence that the vein of plaintiff in error did not extend under the claim of defendant in error, an expression of opinion that there is a difference between a lode sufficient to validate a location under § 2322, Rev. Stat., and an apex giving extralateral rights (not decided by this court, *Lawson v. United States Mining Co.*, 207 U. S. 1) is not necessary to the result, and does not deny a Federal right and this court has not jurisdiction to review the judgment under § 709, Rev. Stat. *Mammoth Mining Co. v. Grand Central Mining Co.*, 72.

6. *Under § 709, Rev. Stat. Involution of Federal question.*

Where the accused during the trial specifically claims that the action of the state court in denying his plea of once in jeopardy operated to deprive him of his liberty without due process of law contrary to the Fourteenth Amendment, this court has jurisdiction under § 709, Rev. Stat., to review the judgment. *Keel v. Montana*, 135.

7. *To review judgment of state court—Effect of unnecessary decision of Federal question.*

Unless a decision upon the Federal question is necessary to the judgment, or was in fact made the ground of the judgment, this court has no jurisdiction to review the judgment of the state court. *Bonner v. Gorman*, 86.

8. *Criminal appeals by Government; scope of review.*

On an appeal taken in a criminal case by the United States under the act of March 2, 1907, c. 2564, 34 Stat. 1246, from the ruling of the Circuit Court sustaining a special plea in bar, this court is limited in its review to that ruling and cannot consider other grounds of demurrer to the indictment. (*United States v. Keitel*, 211 U. S. 370, 398.) *United States v. Mason*, 115.

9. *Of appeals from Circuit Court of Appeals in bankruptcy proceedings.*

*Coder v. Arts*, post, p. 223, followed as to the jurisdiction of this court of appeals from the Circuit Court of Appeals in bankruptcy proceedings, where the amount in controversy exceeds \$2,000 and the question involved is one which might have been taken on writ of error from the highest court of a State to this court. *Hurley v. Atchison, Topeka & Santa Fe Ry. Co.*, 126.

10: *To review cases certified in which question of jurisdiction alone involved.*

Under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, this court has jurisdiction to review cases certified in which the question of jurisdiction is alone involved and under the power conferred by that statute can reverse the court below, when clearly wrong, even upon questions of fact. *Commercial Mutual Accident Co. v. Davis*, 245.

11. *Review of finding of facts made by Supreme Court of Philippine Islands. Section 10 of act of July 1, 1902.*

Although there is no technical finding of facts by the court of first instance of the Philippine Islands, if the opinion shows the facts on which the judgment is based and the courts below differ in regard thereto they may be reviewed by this court under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 691. (*De la Rama v. De la Rama*, 201 U. S. 303.) *Strong v. Repide*, 419.

See APPEAL AND ERROR, 3; CERTIORARI, 3;  
BANKRUPTCY, 3, 5; MANDAMUS, 1, 2.

#### B. OF CIRCUIT COURT OF APPEALS.

*Appellate jurisdiction under § 6 of act of 1891; effect of right of direct appeal to this court.*

The Circuit Court of Appeals does not lose its jurisdiction of an appeal under § 6 of the act of 1891 because questions were involved which would have warranted a direct appeal to this court under § 5 of that act. *Macfadden v. United States*, 288.

See APPEAL AND ERROR, 3;  
BANKRUPTCY, 3.

#### C. OF CIRCUIT COURTS.

1. *Rule of court inconsistent with statute, void.*

The jurisdiction of the Circuit Court is fixed by statute, and a rule of court inconsistent with the statute is invalid. *Davidson Marble Co. v. Gibson*, 10.

2. *Of action of material-man claiming under act of August 13, 1894.*

As the act of August 13, 1894, c. 280, 28 Stat. 278, does not specify in which Federal court the action of a material-man claiming rights thereunder must be brought, the question of jurisdiction is settled by the general statutory provisions relating thereto; and, under the act of March 3, 1887, c. 373, 24 Stat. 552, as corrected by the act of August 13, 1888, c. 866, 25 Stat. 433, a suit cannot be maintained in a district where the defendants do not reside. *Ib.*

3. *Special appearance for purpose of objection to—Validity of rule converting special into general appearance.*

A defendant, having a statutory right to appear specially and object to the jurisdiction and the right to appeal to this court if the objection be overruled, cannot be compelled by a rule of court to waive the objection and appear generally; and Rule 22 of the Circuit Court of the United States for the Ninth Circuit requiring a general appearance if the Circuit Court overrule such objection is inconsistent with § 918, Rev. Stat., and therefore invalid. *Ib.*

4. *Effect of Federal question being merely colorable and of omission to decide it, or deciding it against party claiming.*

Where the Federal questions raised by the bill are not merely colorable but are raised in good faith and not in a fraudulent attempt to give jurisdiction to the Circuit Court, that court has jurisdiction, and can decide the case on local or state questions only, and it will not lose its jurisdiction of the case by omitting to decide the Federal questions or deciding them adversely to the party claiming their benefit. *Siler v. Louisville & Nashville R. R. Co.*, 175.

5. *Sufficiency of involution of Federal question.*

Where the bill not only alleges that the statute creating the commission, but also the order of the commission sought to be enjoined, deprives complainant of its property without due process of law, and also violates other provisions of the Constitution, the Circuit Court obtains jurisdiction without reference to the particular violation of the Fourteenth Amendment. *Barney v. City of New York*, 190 U. S. 430, distinguished. *Ib.*

6. *To determine removability of cause—Protection of jurisdiction—Interference by state court.*

The United States Circuit Court has jurisdiction to determine for itself the removability of a cause and may take jurisdiction thereof and protect such jurisdiction even though the state court refuse to make the removal order; and a final judgment, rendered by and under such conditions by the Circuit Court, cannot be reviewed by the state court, but such judgment is binding on the state court until reversed by this court. *Chesapeake & Ohio Ry. Co. v. McCabe*, 207.

7. *Same.*

While a petitioner, if the state court denies his petition for removal, may remain in that court and bring the case here for review on writ of error after final judgment, he is not obliged so to do, but may file the record in the Circuit Court, and that court has jurisdiction

to determine the question of removability and, notwithstanding § 720, Rev. Stat., it may protect its jurisdiction by injunction against further proceedings in the state court. (*Traction Co. v. Mining Co.*, 196 U. S. 239.) *Ib.*

8. *Same.*

A judgment rendered by the Circuit Court under such conditions is not void even if jurisdiction be improperly assumed and retained, as the jurisdictional question can be reviewed by this court, and, until reversed, the judgment is binding on the state court and cannot be treated as a nullity. (*Dowell v. Appelgate*, 152 U. S. 327.) *Ib.*

9. *When suit one arising under Constitution and laws of United States. Showing by plaintiff essential.*

A suit only arises under the Constitution and laws of the United States within the meaning of § 1 of the act of August 13, 1888, c. 866, 25 Stat. 433, conferring jurisdiction on the Circuit Court when the plaintiff's statement of his own cause of action shows that it is based on those laws or that Constitution, and it is not enough that defendant may base his defense thereon. (*Louisville & Nashville Railroad v. Mottley*, 211 U. S. 149.) *In re Winn*, 458.

10. *Effect of general appearance as waiver of objection to jurisdiction.*

While a general appearance in the Circuit Court after removal may amount to a waiver of objection to the jurisdiction if some Circuit Court has jurisdiction of the cause, *In re Moore*, 209 U. S. 490, neither appearance nor consent can confer jurisdiction where no Circuit Court has jurisdiction of the controversy. (*Ex parte Wisner*, 203 U. S. 449.) *Ib.*

See APPEAL AND ERROR, 3;

REMOVAL OF CAUSES.

D. OF DISTRICT COURTS.

*Citizenship for purposes of—District Court for Porto Rico—Corporation organized under laws of Spain.*

All relations between Spain and Porto Rico having been severed by the cession of that Territory by the Treaty of Paris, a corporation organized under the laws of Spain for purely local and charitable purposes in Porto Rico is not to be regarded as a citizen of Spain within the meaning of the provisions of the act of April 12, 1900, c. 191, 31 Stat. 77, as amended by the act of March 2, 1901, c. 812, 31 Stat. 953, relating to the jurisdiction of the District Court of the

United States for Porto Rico, nor is such a corporation a citizen of the United States within the meaning of such provision; if it is a citizen of any country it is a citizen of Porto Rico. *Martinez v. La Asociacion de Senoras*, 20.

#### E. OF STATE COURTS.

1. *Over foreign corporations; doing of business within State essential.*

In order for a state court to obtain jurisdiction over a foreign corporation having neither property nor agent within a State it is essential for the corporation to be doing business in the State. *Commercial Mutual Accident Co. v. Davis*, 245.

2. *Of suit against foreign corporation—What constitutes doing of business within State for purpose of.*

An insurance company with outstanding policies in a State on which it collects premiums and adjusts losses *held*, in this case, to be doing business within that State, so as to render it liable to an action, and that service, according to the law of the State, on a doctor sent to investigate the loss and having power to adjust the same is sufficient to give the state court jurisdiction. *Ib.*

#### F. GENERALLY.

1. *Of States and Territories; limitation of jurisdiction.*

No State or Territory can pass laws having force or effect over persons or property beyond its jurisdiction. *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.

2. *Effect of statute of Territory where cause of action arises, requiring such actions to be brought in the courts thereof, on jurisdiction of action by other court.*

A court that only permits a recovery on a cause of action on plaintiff's showing compliance with the conditions imposed by a statute of the Territory in which the cause arose has given to that statute the observance required under § 906, Rev. Stat., and if the action is one otherwise controlled by common-law principles its jurisdiction is not defeated because such statute requires actions of that nature to be brought in the courts of the Territory. *Ib.*

3. *Effect of appearance to object to jurisdiction and for removal.*

Where the defendant makes no appearance in the state court or in the Circuit Court except for the purpose of raising the question of jurisdiction and removing the case to the Federal court, such proceed-

ings do not amount to a general appearance. *Commercial Mutual Accident Co. v. Davis*, 245.

See ACCOUNTS AND ACCOUNTING;	CONSTITUTIONAL LAW, 3, 4;
ACTIONS, 2, 3;	EQUITY;
APPEAL AND ERROR;	RATE REGULATION.

JURY AND JURORS.

See CONSTITUTIONAL LAW, 6.

KANSAS.

See BOUNDARIES.

LAW.

See WORDS AND PHRASES.

LAW GOVERNING.

See ACTIONS, 2, 3;  
LEX LOCI.

LEGISLATIVE POWERS.

See CONSTITUTIONAL LAW, 5;  
IMMIGRATION;  
TERRITORIES, 1, 2, 3.

LEX LOCI.

1. *Determination of character of act as lawful or unlawful.*

While a country may treat some relations between its own citizens as governed by its own law in regions subject to no sovereign, like the high seas, or to no law recognized as adequate, the general rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where it is done. *American Banana Co. v. United Fruit Co.*, 347.

2. *Effect of conspiracy in one country to do acts in another.*

A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful if they are permitted by the local law. *Ib.*

See ACTIONS, 2.

LICENSE.

See PATENTS, 5.

## LIFE INSURANCE.

See ACCOUNTS AND ACCOUNTING;  
INSURANCE COMPANIES.

## LIFE INSURANCE COMPANIES.

See RECEIVERS;  
INSURANCE COMPANIES.

## LIQUORS.

See LOCAL LAW (S. CAR.).

## LOCAL LAW.

*Arizona.* Rev. Stat. 1887, § 3198. Riparian rights (see Riparian Rights). *Boquillas Cattle Co. v. Curtis*, 339.  
Howell's Code of 1864, c. 61, § 7, adopting common law (see Riparian Rights, 3). *Ib.*

*District of Columbia.* Code, § 935 (see Appeal and Error, 2). *United States v. Evans*, 297.

*Montana.* Penal Code, § 2125. Discharge of jury (see Constitutional Law, 6). *Keerl v. Montana*, 135.

*New Mexico.* Actions for personal injuries. Territorial act of March 11, 1903 (see Actions, 3). *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 55.

*Philippine Islands.* Spanish Civil Code, § 1459. Purchase of stock by directors of corporation (see Corporations, 4, 5). *Strong v. Repide*, 419. Civil Code, §§ 1261-1269. Avoidance of contract (see Contracts, 4). *Ib.*

*South Carolina.* *State Liquor Dispensary legislation.* The legal history of the constitutional provisions and legislative enactments of South Carolina in regard to the State Liquor Dispensary, reviewed. *Murray v. Wilson Distilling Co.*, 151.

## MANDAMUS.

1. *Purpose of writ issued under § 688, Rev. Stat.*

A writ of mandamus when issued under § 688, Rev. Stat., is for the purpose of revising and correcting proceedings in a case already instituted in the courts and is part of the appellate jurisdiction of



this court, which is subject to such regulations as Congress shall make. *In re Winn*, 458.

2. *Writ will lie from this court to compel Circuit Court to remand case to state court.*

Mandamus will lie from this court to compel a Circuit Court to remand a case to the state court where it is apparent from the record that the Circuit Court has no jurisdiction whatever, and the writ will lie even though the party aggrieved may also be entitled to appeal or writ of error. *Ib.*

3. *When appeal or writ of error not adequate remedy for wrongful removal of cause, preventing issuance of mandamus.*

While mandamus never lies where the party praying therefor has another adequate remedy, an appeal or writ of error at the end of a litigation, which must go for naught, is not an adequate remedy for a plaintiff whose case has been wrongfully removed from the state court to the Circuit Court, and held there against his protest. *Ib.*

4. *To control judicial discretion when subject-matter without jurisdiction of court.*

The rule that mandamus will not lie to control the judicial discretion of an inferior court does not apply to an attempt of that court to exercise its discretion on subject-matter not within its jurisdiction. *In re Pollitz*, 206 U. S. 323, and *Ex parte Nebraska*, 209 U. S. 436, distinguished. *Ib.*

#### MANDATE.

*See* PRACTICE AND PROCEDURE, 13.

#### MATERIAL-MEN.

*See* JURISDICTION, C 2.

STATUTES, A 11.

#### MENTAL CAPACITY.

*See* EVIDENCE.

#### MINES AND MINING.

*See* JURISDICTION, A 5.

#### MISSOURI.

*See* BOUNDARIES.

## MISTRIAL.

*See* CONSTITUTIONAL LAW, 6.

## MOOT CASE.

*See* PRACTICE AND PROCEDURE, 12.

## MORTGAGES.

*See* BANKRUPTCY, 2.

## MULTIPLICITY OF SUITS.

*See* EQUITY, 4, 5.

## MUNICIPAL CORPORATIONS.

*See* EQUITY, 2, 3

## NEGLIGENCE.

1. *Proximate cause.*

Although defendant may have been originally in fault, an entirely independent and unrelated cause subsequently intervening, and of itself sufficient to have caused the mischief, may properly be regarded as the proximate cause of plaintiff's injuries. (*Insurance Co. v. Tweed*, 7 Wall. 44.) *Atchison, Topeka & Santa Fe Ry. Co. v. Calhoun*, 1.

2. *Proximate cause—Railroad accident.*

An unsuccessful attempt to replace a child on a railroad car held, in this case; to be the proximate cause of injury to the child notwithstanding such attempt was made as the result of the child's mother having been prevented from getting off the car by the negligence of the railway employés. *Ib.*

3. *Risks to be provided against—Liability of railroad.*

Failure to foresee and provide against extraordinary and unreasonable risks taken by other persons cannot be regarded as negligence, and so held that a railroad company was not liable for negligence to one who, in a reckless effort to run after and board a rapidly moving train, stumbled on a truck which had been left by an employé at a place where ordinarily no passenger got on or off the cars. *Ib.*

## OPINION EVIDENCE

*See* EVIDENCE.

## PARTIES.

*See* ACCOUNTS AND ACCOUNTING;  
ACTIONS, 1.

## PARTNERSHIP.

1. *Effect of adjudication putting two or more persons into bankruptcy as partners to establish existence of partnership.*

While an adjudication putting two or more persons into bankruptcy as partners is, for the purpose of administering the property, good as against all the world, it does not establish the existence of the partnership except as against parties entitled to be heard, and that question is not *res judicata* as against one who had denied being a partner and had not been heard. *Manson v. Williams*, 453.

2. *One furnishing capital to business presumed to be partner.*

It will be presumed that one who furnished capital for business expects gain therefrom, and if he is not a creditor receiving interest, his gain must come from profits as a partner. *Ib.*

## PATENTS.

1. *Combination as true mechanical device.*

A combination which produces by the coöperation of its constituents the result specified in the manner specified is a true mechanical device and a valid combination. *Leeds & Catlin v. Victor Talking Mach. Co.*, 301.

2. *Combination of process and apparatus.*

A patent may embrace more than one invention, *Steinmetz v. Allen*, 192 U. S. 543, and it may embrace a process and the apparatus by which it is performed. *Ib.*

3. *Combination defined—Inclusion of separate claim for new element in same patent as combination.*

While a combination is a union of elements which may be partly new, or wholly old or wholly new, the combination is a means distinct from its constituent elements, any of which, if new and patentable, may be covered by separate claims in the same patent as the combination. *Ib.*

4. *Combination; destruction and reconstruction.*

Where an element of a combination becomes unfit by deterioration there is a destruction of the combination and a renewal of that element amounts to reconstruction. *Leeds & Catlin v. Victor Talking Mach. Co.*, 325.

5. *Combination; substitution or resupply of elements.*

The right of substitution or resupply of elements of a combination extends only to repair and replacement made necessary by deteriora-

tion so as to preserve its fitness; license goes no further and does not extend to furnishing such elements to increase effectiveness or variety of the results of the combination. *Ib.*

6. *Duration—Effect of forfeiture or expiration of foreign patent for same invention.*

A patent of the United States for an invention extends under § 4887, Rev. Stat., for the duration of the definite term for which a foreign patent may have been granted for the same invention, and does not expire by the forfeiture of such foreign patent or through the operation of a condition subsequent according to the foreign patent, such as the payment of fees during the life of the patent. *Leeds & Catlin v. Victor Talking Mach. Co.*, 301.

7. *Expiration; effect on domestic of expiration of foreign patent. Identity of invention.*

In this case held that the foreign patent granted to Berliner for talking machines was not identical with certain claims included in his United States patent in suit and therefore his patent as to those claims did not expire with the foreign patent under § 4887, Rev. Stat. *Ib.*

8. *Foreign patent; effect on dependent and related inventions.*

Where dependent and related inventions are patented separately a foreign patent for either does not affect the other under § 4887, Rev. Stat., and the same rule applies if such inventions are embraced in one patent. *Ib.*

9. *Infringement—Effect of infringement or invalidity of one of several separate claims in patent.*

Separate claims in the same patent are independent inventions, and the infringement of one is not the infringement of the other, and the redress of the patentee is limited by the injury he suffers; nor is the validity and duration of valid claims affected by the invalidity or expiration of any other claim. *Siemens v. Sellers*, 123 U. S. 276, distinguished. *Ib.*

10. *Infringement—Sale of unpatented record discs specially adapted for use on patented talking machine, constituting infringement.*

Unpatented elements of a patented combination may not be sold for use therewith although they may legally be sold for use with other machines, and so held that it was infringement to sell record discs specially adapted therefor to the users of a patented talking machine although such discs were not patented and could lawfully be used in combination with other talking machines. *Ib.*

11. *Infringement; making and supplying unpatented element, necessary for operation of combination, as.*

There is a distinction between the article which a combination machine deals with and the constituent elements composing the combination; and while it may not be infringement to supply the unpatented article dealt with by the combination, it is infringement to make and supply an unpatented element, necessary for the operation of the combination. *Morgan Envelope Co. v. Albany Paper Co.*, 152 U. S. 425, distinguished. *Leeds & Catlin v. Victor Talking Mach. Co.*, 325.

12. *Same.*

The combination itself, regardless of whether any or all of the elements be old or new, is the invention and, in law, is as much a unit as a single or non-composite instrument and one using or contributing to its use without permission infringes it. *Ib.*

13. *Same.*

Whether the elements of a combination patent are or are not patented is immaterial. *Ib.*

*See PRACTICE AND PROCEDURE, 2.*

#### PENAL STATUTES.

*See STATUTES, A 9.*

#### PENALTIES AND FORFEITURES.

*See ACTIONS, 4;*

VERDICT.

#### PERSONAL INJURIES.

*See ACTIONS, 2, 3; TERRITORIES, 1;*

NEGLIGENCE; TREATIES, 2, 3.

#### PHILIPPINE ISLANDS.

*See CONTRACTS, 4;*

JURISDICTION, A 11.

#### PLEADING.

1. *Demurrer, admissions by.*

A demurrer only admits facts well pleaded in the pleading demurred to; it does not admit the pleader's conclusions of law or the correctness of his opinions as to future results. *Equitable Life Assurance Soc. v. Brown*, 25.

2. *Same.*

Where the bill avers solvency of defendant at present, a prediction of insolvency in the future on account of inability to meet claims of policyholders by reason of mismanagement is a mere conclusion of law and not a fact which is admitted by demurrer or on which a court can grant equitable relief. *Ib.*

*See* JURISDICTION, A 2, 8; C 9.

## PLEDGE.

*See* BANKRUPTCY, 7.

## POLICE POWER.

*See* CONSTITUTIONAL LAW, 10, 11.

## PORTO RICO.

1. *Status of—Citizenship and control of local corporations.*

The people of Porto Rico have been created by Congress and exist as a body politic subject only to the usual reserved power of annulment of territorial legislation; and the government of Porto Rico under the organic act is charged with the creation and control of corporations strictly local in character, and corporations of that nature organized prior to the cession of the island are to be regarded for jurisdictional purposes as citizens of Porto Rico. *Martinez v. Asociacion de Senoras*, 20.

2. *Treaty of Paris; Article IX construed—Status of corporations.*

While by Article IX of the Treaty of Paris between Spain and the United States provision is made for Spanish subjects, natives of the peninsula, to preserve their allegiance to Spain, that article has no reference to corporations; nor is there any other provision of the treaty providing therefor. *Quære* and not decided, what the citizenship now is of Spanish corporations doing business in Porto Rico prior to its cession by the Treaty of Paris to the United States. *Ib.*

*See* JURISDICTION, D.

## POWERS OF CONGRESS.

<i>See</i> CONSTITUTIONAL LAW, 5,	MANDAMUS, 1;
10, 11;	PORTO RICO, 1;
IMMIGRATION;	STATUTES, A 2, 9;
INTERSTATE COMMERCE, 5;	TERRITORIES, 3.

## PRACTICE AND PROCEDURE.

1. *Acceptance of finding of lower courts.*

In the absence of a clear showing of its incorrectness this court accepts

the finding of the lower courts. *Sand Filtration Corporation v. Cowardin*, 360.

2. *Following lower court's findings of fact.*

Where grave questions of fact are presented by the proof on which a preliminary injunction has been granted in a patent case, this court will not go beyond the action of the lower court and decide those questions and the case on the merits. *Leeds & Catlin v. Victor Talking Mach. Co.*, 301.

3. *Following findings of fact concurred in by lower courts.*

Where both the District Court and Circuit Court of Appeals have found as a fact that a partnership existed and owned the stock, while this court may, it will not, as a general rule, disturb the findings. *Manson v. Williams*, 453.

4. *Following finding of fact concurred in by lower courts.*

In this case, there being evidence to support the finding of the two lower courts that a partnership existed by an implied understanding between two brothers pending the formation of a corporation, this court affirms the judgment notwithstanding that it might not necessarily have reached the same conclusion had the case been here tried in the first instance. *Ib.*

5. *Following state court's construction of state statute.*

The construction of a state statute by the highest court of the State must be accepted by this court even though similar statutes of other States have been differently construed by the highest courts of those States. *Maiorano v. Baltimore & Ohio R. R. Co.*, 268.

6. *Findings of fact by state court, when not conclusive; reconsideration by this court; scope of consideration.*

In reviewing the judgment of a state court under § 709, Rev. Stat., findings of fact resting on a false definition of a right existing under a Federal statute cannot be assumed to be correct and may be reconsidered; but the evidence will not be discussed here, and this court considers only whether there has been a mistake of law. *Mammoth Mining Co. v. Grand Central Mining Co.*, 72.

7. *Ground for reversal where findings of fact by trial court reestablished by highest court of State on appeal.*

Where the trial court merely called in an advisory jury and in the highest court of the State on appeal the evidence was discussed and the findings reestablished, reversal by this court can only be based on errors, if any, in opinion of the highest court. *Ib.*

8. *Effect of state court's construction of state statutes.*

Even though state legislation and decisions as to the construction of state statutes may not be controlling upon this court, yet they may be persuasive. *Murray v. Wilson Distilling Co.*, 151.

9. *Constitutional questions not decided if case can be otherwise disposed of.*

The rule of this court is not to decide constitutional questions if the case can be decided without doing so; and when, as in this case, it can dispose of the case by construction of the statute and on the lack of authority given by such statute to make the order complained of, it will do so rather than on the constitutional questions involved. *Siler v. Louisville & Nashville R. R. Co.*, 175.

10. *Construction by this court of state statute not construed by state court.*

Notwithstanding the highest court of the State has not yet construed the statute involved, this court must, in a case of which it has jurisdiction, construe it. *Ib.*

11. *Presumptions avoided where nothing in record on which to base them.*

Where there is nothing in the record on which to base them this court cannot indulge in presumptions as to which of several possible forms a transaction may have taken. *Selliger v. Kentucky*, 200.

12. *Dismissal of appeal where case has become a moot one.*

When the judgment appealed from cannot be affected by the decision of the appellate court the case becomes a moot one and the appeal should be dismissed; hearing and deciding such an appeal for the purpose of establishing a rule of observance in cases subsequently arising is not an exercise of judicial power. *United States v. Evans*, 297.

13. *Mandate on reversal; when character of decree to be entered below not directed.*

As the construction now given the act differs widely from the construction which the Government gave to the act and which it was the purpose of these suits to enforce, it is not necessary in reversing and remanding, to direct the character of decrees which shall be entered, but simply to reverse and remand the case with directions to enforce and apply the statute as it is now construed. *United States v. Delaware & Hudson Co.*, 366.

14. *Affirmance of judgment objectionable in form.*

Although there may be objections to the form of judgment in the Court of First Instance as they are not of a material nature this court will follow the same course. *Strong v. Repide*, 419.

See BANKRUPTCY, 6; PROCESS;  
JURISDICTION, A 8; STATUTES, A 5, 10.



PREFERENCES.

*See* BANKRUPTCY, 1, 2.

PRESUMPTIONS.

*See* EQUITY, 2;

PARTNERSHIP, 2;

PRACTICE AND PROCEDURE, 11.

PROCESS.

*Fraud in obtension of service as ground for setting aside.*

While service of process on one induced by artifice or fraud to come within the jurisdiction of the court will be set aside, this court will not reverse the finding of the trial court that there was no such fraud where, as in this case, there is testimony supporting it. *Commercial Mutual Accident Co. v. Davis*, 245.

*See* JURISDICTION, E 2;

STATES, 1.

PROSTITUTES.

*See* CONSTITUTIONAL LAW, 11.

PROXIMATE CAUSE.

*See* NEGLIGENCE, 1, 2.

PUBLIC OFFICERS.

*See* SOVEREIGNTY, 2.

PUBLIC SERVICE CORPORATIONS.

*See* EQUITY, 2, 3.

PUBLIC WORKS.

*See* JURISDICTION, C 2;

STATUTES, A 11.

RAILROADS.

<i>See</i> INTERSTATE COMMERCE;	RATE REGULATION;
NEGLECTANCE. 2, 3;	STATUTES, A 4.

RATE REGULATION.

1. *Jurisdiction of state railroad commission to make general maximum rates for all commodities not to be implied.*

Jurisdiction so extensive as to place in the hands of a commission power

to make general maximum rates for all commodities between all points in the State is not to be implied, but must be given in language admitting no other reasonable construction, and this power cannot be found in the Kentucky Railroad Commission Act. *Siler v. Louisville & Nashville R. R. Co.*, 175.

2. *Power of state railroad commission to fix maximum rates on all commodities.*

The fact that the legislature of a State gives to a railroad commission no power to raise rates, but only power to reduce rates found to be exorbitant after hearing on specific complaint, is an argument against construing the statute so as to give the commission power to fix maximum rates on all commodities. *Ib.*

3. *Effect on entire tariff of illegal fixing of general rate tariff for maximum rates on all commodities.*

Where a railroad commission after a hearing on specific complaint as to a rate on a particular commodity makes a general rate tariff for maximum rates on all commodities which is beyond its statutory power, the whole tariff falls, and the rate on the tariff on the particular commodity will not be separately sustained. *Ib.*

4. *Same.*

The Kentucky railroad commission having, after a hearing on complaints that the rates on lumber were too high, attempted to impose a general maximum intrastate tariff schedule, and the statute creating the commission not giving it authority to make such a schedule, this court, without deciding whether either the statute or the order deprives the railroad companies of their property without due process of law, holds that the entire schedule of rates including those on lumber must fall as being beyond the jurisdiction of the commission to establish in that manner. *Ib.*

## RECEIVERS.

1. *Appointment for life insurance company; considerations entering into.*

A life insurance company which has several hundred thousand policyholders is in its nature a public institution, and where there is no apprehension as to its solvency, a court of equity will consider all the facts as to the relative advantages and disadvantages of a receivership or accounting before granting relief of that nature in the suit of an individual policyholder even if jurisdiction to grant such relief exists. *Equitable Life Assurance Soc. v. Brown*, 25.

2. *Ground for appointment of receiver for life insurance company.*

The fact that stockholders claim the surplus of an insurance company

and the officers of the company do not actively deny the claim gives no ground for a receivership at the suit of a policyholder claiming that the surplus belongs to the policyholders. *Ib.*

### REMEDIES.

*See* APPEAL AND ERROR; EQUITY, 1;  
CERTIORARI; INJUNCTION;  
MANDAMUS.

### REMOVAL OF CAUSES.

1. *Appearance of Federal question in plaintiff's case essential to removal to Federal court.*

Although a defendant in the state court may set up a defense based on Federal rights which will, if denied, entitle him ultimately to have the decision reviewed by this court, if the Federal question does not appear in the plaintiff's statement the case is not removable to the Circuit Court of the United States. *In re Winn*, 458.

2. *Original jurisdiction as prerequisite to removal.*

No cause can be removed from the state court to the Circuit Court of the United States unless it could have originally been brought in the latter court. (*Boston Mining Co. v. Montana Ore Co.*, 188 U. S. 632, and *Ex parte Wisner*, 203 U. S. 449.) *Ib.*

*See* APPEAL AND ERROR, 1;  
JURISDICTION, C 6, 7, 10; F 3;  
MANDAMUS, 2, 3.

### RESCISSION OF CONTRACT.

*See* CONTRACTS, 4;  
CORPORATIONS, 3, 5.

### RESERVED POWERS.

*See* CONSTITUTIONAL LAW, 10, 11.

### RES JUDICATA.

*See* PARTNERSHIP, 1.

### RIPARIAN RIGHTS.

1. *Arizona law relating to.*

Under § 3198, Rev. Stat. of Arizona of 1887, the common-law doctrine of riparian rights does not now obtain in that Territory, and, as held by the Supreme Court of the Territory, the doctrine of appropriation was recognized and to some extent in force prior to and since

1833 in the State of Sonora now a part of that Territory. *Boquillas Cattle Co. v. Curtis*, 339.

2. *Confirmation of estate in Arizona, by United States; effect to give riparian rights not included in original Mexican title.*

Confirmation of an estate does not enlarge it, and where the original Mexican title did not carry riparian rights the mere confirmation thereof by the United States does not give such rights to the confirmee. *Ib.*

3. *Arizona; effect of adoption of common law.*

The legislative act of Arizona, Howell's Code of 1864, c. 61, § 7, adopting the common law of England was merely the adoption of a general system of law in place of the Spanish Mexican general system which was simultaneously repealed, and the regulation of and rights to water were by the same act made subject to the natural and physical condition of the Territory and the necessities of its people; and this court sustains the Supreme Court of the Territory in its interpretations of the qualifications imposed on the general adoption of the common law in respect to the use of water. *Ib.*

4. *Arizona—Right to use water not confined to riparian proprietors.*

The right to use water is not confined under the customary law of Arizona to the riparian proprietors. Where the riparian proprietor is entitled under a general statute to have the damages to his land taken for withdrawal of water by appropriators assessed, the decree below will not be disturbed because no provision was made for compensation, it appearing in this case that the objection was technical and the point was not discussed below. *Ib.*

#### RULES OF COURT.

*See JURISDICTION, C 1, 3.*

#### SALES.

*Judicial; setting aside.*

However vexatious the conduct of a litigant may be his property should not be sacrificed by reason of the court's action; and it appearing, in this case, that the existence of an order in regard to a sale of property under execution made the sale disastrous, it was proper, whether the order was valid or not, to set the sale aside and order a reconveyance on payment into court of the amount of the judgment. *Van Gieson v. Maile*, 338.

*See CORPORATIONS, 3, 4, 5;*

*PATENTS, 10;*

*VENDOR AND VENDEE.*

SECOND JEOPARDY.

*See* CONSTITUTIONAL LAW, 2, 6.

SELF-INCRIMINATION.

*See* ACTIONS, 4.

SERVICE OF PROCESS.

*See* JURISDICTION, E 2;

PROCESS;

STATES, 1.

SHERMAN ACT.

*See* ANTI-TRUST LAW.

SOVEREIGNTY.

1. *Definition.*

Sovereignty means that the decree of the sovereign makes law; and foreign courts cannot condemn the influences persuading the sovereign to make the decree. *Rafael v. Verelst*, 2 Wm. Bl. 983, 1055, distinguished. *American Banana Co. v. United Fruit Co.*, 347.

2. *Acts of soldiers and officials as acts of Government.*

Acts of soldiers and officials of a foreign government must be taken to have been done by its order. *Ib.*

*See* LEX LOCI.

SPAIN.

*See* JURISDICTION, D;

PORTO RICO, 2.

SPECIAL APPEARANCE.

*See* JURISDICTION, C 3; F 3.

SPECIFIC PERFORMANCE.

*See* CONSTITUTIONAL LAW, 4.

STATES.

1. *Regulation of foreign corporations; service of process.*

A State may require a foreign insurance corporation not having any regular office in the State to make its agents who have authority to settle losses in the State competent to receive notice of actions

concerning such losses. *Commercial Mutual Accident Co. v. Davis*, 245.

2. *Power to regulate delivery of messages after interstate transit completed.*

In the absence of action on the part of Congress a State may regulate the conduct of local delivery of telegraph messages after the interstate transit by wire is completed. *Western Union Telegraph Co. v. Wilson*, 52.

See BOUNDARIES;

CONSTITUTIONAL LAW, 2,

3, 4, 7, 8, 9, 10, 11;

IMMIGRATION;

INJUNCTION, 2;

JURISDICTION, F 1; E.

## STATUTES.

### A. CONSTRUCTION OF.

1. *Criterion of constitutionality.*

In the construction of a statute the power of the lawmaking body to enact it, and not the consequences resulting from the enactment is the criterion of constitutionality. *United States v. Delaware & Hudson Co.*, 366.

2. *Avoidance of grave constitutional questions.*

A prohibition in an act of Congress will not be extended to include a subject where the extension raises grave constitutional questions as to the power of Congress, where one branch of that body rejected an amendment specifically including such subject within the prohibition. *Ib.*

3. *Constitutionality maintained if possible—Avoidance of grave and doubtful constitutional questions.*

The duty of this court in construing a statute which is reasonably susceptible of two constructions, one of which would render it unconstitutional and the other valid, to adopt that construction which saves its constitutionality (*Knights Templar Indemnity Co. v. Jarman*, 187 U. S. 197) includes the duty of avoiding a construction which raises grave and doubtful constitutional questions if the statute can be reasonably construed so as to avoid such questions. (*Harriman v. Interstate Com. Comm.*, 211 U. S. 407.) *Ib.*

4. *Same. Rule applied to commodities clause of Hepburn Act.*

This rule applied to the commodities clause of the Hepburn Act so as to avoid deciding the constitutional questions which would arise if the clause were construed so as to prohibit the carrying of commodities owned by corporations of which the carrier is a shareholder, or which it had mined, manufactured or produced at some time prior to the transportation. *Ib.*

5. *Separable provisions; when constitutionality of separable provision not considered.*

Where, as in this instance, the provision for penalties is separable from the provisions for regulations, the court will not consider the question of the constitutionality of the penalty provisions in a suit brought by the Government to enjoin carriers from violating the regulations and in which no penalties are sought to be recovered. *Ib.*

6. *Ambiguity resolved—Restraint of provisions for purposes of accord.*

Where ambiguity exists it is the duty of a court construing a statute to restrain the wider and doubtful provisions so as to make them accord with the narrow and more reasonable provisions and thus harmonize the statute. *Ib.*

7. *Limitation of operation and effect.*

A statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation. *American Banana Co. v. United Fruit Co.*, 347.

8. *Of state statute; strained implication avoided.*

A state statute will not, by strained implication, be construed as a divestiture of rights of property, or as authorizing administration of the assets of a governmental agency, without the presence of the State, and so held as to the statute of South Carolina providing for winding up the State Liquor Dispensary. *Murray v. Wilson Distilling Co.*, 151.

9. *Penal statutes without the power of Congress to enact cannot be sustained by the courts.*

Notwithstanding the offensiveness of the crime the courts cannot sustain a Federal penal statute if the power to punish the same has not been delegated to Congress by the Constitution. *Keller v. United States*, 138.

10. *Of charter granted under general act—Effect on Federal courts of state court's construction.*

The construction of a general act and a charter granted thereunder pertain to the state court just as if the charter were granted by a special act; and in a suit by the holder of a policy, executed at the home office, the meaning and construction of the charter as held by the state court will be binding on the Federal courts, and, in the absence of any Federal question, the construction of the contract

by the state court will be of most persuasive influence even if not of binding force. *Equitable Life Assurance Soc. v. Brown*, 25.

11. *Prospective effect of act of February 24, 1905, c. 280.*

*U. S. Fidelity Co. v. Struthers Wells Co.*, 209 U. S. 306, followed to effect that the act of February 24, 1905, c. 778, 33 Stat. 811, amending the act of August 13, 1894, c. 280, 28 Stat. 278, is prospective and does not control actions based on rights of material-men already accrued, but that such actions are controlled by the act of 1894. *Davidson Marble Co. v. Gibson*, 10.

12. *Limitation of operation amounting to judicial legislation.*

Although a limitation to its operation might be reasonable and thus assuage the radical results of a prohibitory statute, if it is not expressed in the statute, to engraft such a limitation would be pure judicial legislation. *United States v. Delaware & Hudson Co.*, 366.

See BOUNDARIES, 2;

PRACTICE AND PROCEDURE, 5,

CERTIORARI, 2;

8, 10;

INTERSTATE COMMERCE, 1, 4;

RATE REGULATION, 2.

#### B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

#### C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

#### STOCK AND STOCKHOLDERS.

See ACTIONS, 1;

CORPORATIONS;

RECEIVERS, 2.

#### SUITS AGAINST STATES.

See CONSTITUTIONAL LAW, 3, 4, 7, 8.

#### SURETIES.

See JURISDICTION, C 2;

STATUTES, A 11.

#### TAXES AND TAXATION.

*Tax on warehouse receipt as tax on goods represented.*

A tax upon warehouse receipts for goods amounts in substance and effect to a tax upon the goods themselves. (*Fairbanks v. United States*, 181 U. S. 283.) *Selliger v. Kentucky*, 200.

See CONSTITUTIONAL LAW, 8, 9;

INJUNCTION, 1, 2, 3.



## TELEGRAMS.

See JURISDICTION, A 3;  
STATES, 2.

## TERRITORIES.

1. *Legislative power concerning personal injuries and rights of action.*

Where Congress confers on a Territory legislative power extending to all rightful subjects of legislation the Territory has authority to legislate concerning personal injuries and rights of action relating thereto; and so held in regard to the legislative power of New Mexico under act of Sept. 9, 1850, c. 49, 9 Stat. 446. *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*. 55.

2. *Legislative act an exercise of authority under United States.*

The passage of a legislative act of a Territory is the exercise of authority under the United States. (*McLean v. Railroad Co.*, 203 U. S. 38, 47.) *Ib.*

3. *Legislative powers—Revisory power of Congress.*

Congress has only reserved a revisory power over territorial legislation, and a statute duly enacted, and within the legislative power of the Territory, remains in full force until Congress annuls it by exerting such power. (*Miner's Bank v. Iowa*, 12 How. 1, 8.) *Ib.*

See CONSTITUTIONAL LAW, 5;      PORTO RICO, 1;  
JURISDICTION, F 1;      RIPARIAN RIGHTS.

## TITLE.

See BOUNDARIES, 3;  
RIPARIAN RIGHTS, 2.

## TREATIES.

1. *Force and effect of treaty with foreign government.*

A treaty between the United States and a foreign government within the constitutional limits of the treaty-making power is, by the express words of the Constitution, the supreme law of the land binding alike on national and state courts and must be enforced by them in the litigation of private rights. *Maiorano v. Baltimore & Ohio R. R. Co.*, 268.

2. *Treaty with Italy of 1871; giving of actions for injury and death not within contemplation of.*

While undoubtedly the giving of actions for injury and death results in care and security against accidents to travelers the protection and security thus afforded are too remote to be considered as ele-

ments in contemplation of the contracting powers to the treaty of 1871 between Italy and the United States. *Ib.*

3. *Same.*

By a fair construction, Articles 2, 3 and 23 of the treaty with Italy of 1871, 17 Stat. 845, do not confer upon the non-resident alien relatives of a citizen of Italy a right of action for damages for his death in one of the States of this Union although such an action is afforded by a statute of that State to native resident relatives, and although the existence of such an action might indirectly promote his safety; and so held as to the statute of Pennsylvania, it having been so construed by the highest court of that State. *Ib.*

*See* PORTO RICO, 2.

### TRUSTEE IN BANKRUPTCY.

*See* BANKRUPTCY, 7.

### TRUSTS AND TRUSTEES.

*See* INSURANCE COMPANIES, 1.

### UNITED STATES.

*See* APPEAL AND ERROR, 2;

CERTIORARI, 2;

VERDICT.

### VENDOR AND VENDEE.

1. *Fraud of vendor invalidating sale made through agent.*

Where a sale made through an agent of the vendor has been effected by the fraud and deceit of the vendor, the sale cannot stand whether or not the vendor's agent had power to sell. *Strong v. Repide*, 419.

2. *Fraud to avoid sale—Method of payment as evidence of fraudulent intent and scheme.*

While the method of payment cannot have induced the vendor's consent to a sale, where that method tended to conceal the identity of the purchaser and was part of a scheme to conceal facts, the knowledge of which would have resulted in vendor's refusal to sell, evidence as to the payment is admissible to show the fraudulent intent and scheme of the purchaser. *Ib.*

*See* CORPORATIONS, 1-5.

### VERDICT.

*Direction of verdict for Government in action to recover penalty prescribed by Alien Immigration Act of 1903.*

A suit brought by the United States to recover the penalty prescribed

by §§ 4 and 5 of the Alien Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213, is a civil suit and not a criminal prosecution, and when it appears by undisputed testimony that a defendant has committed an offense against those sections the trial judge may direct a verdict in favor of the Government. *Hepner v. United States*, 103.

#### WAIVER.

See APPEAL and ERROR, 4;  
JURISDICTION, C 10.

#### WAREHOUSE RECEIPTS.

See CONSTITUTIONAL LAW, 9;  
TAXES AND TAXATION.

#### WATER BOUNDARIES.

See BOUNDARIES.

#### WATERS.

See RIPARIAN RIGHTS.

#### WILL CONTESTS.

See EVIDENCE.

#### WITNESSES.

See EVIDENCE.

#### WORDS AND PHRASES.

*Law defined.*

Law is a statement of the circumstances in which the public force will be brought to bear upon men through the courts; but the word commonly is confined to such prophecies or threats when addressed to persons living within the power of the courts. *American Banana Co. v. United Fruit Co.*, 347.

#### WRIT AND PROCESS.

See APPEAL AND ERROR;	JURISDICTION;
CERTIORARI;	MANDAMUS;
INJUNCTION;	PROCESS.

#### WRIT OF ERROR.

See APPEAL AND ERROR;  
JURISDICTION.